Re MOTOR TRADERS FINANCE CO., LTD.

[Criminal Revision (Brown, Ag. C. J.) May 3, 1951]

[Singapore — Criminal Revision No. 1 of 1951]

Opium and Chandu Proclamation (No. 43) s. 17(1) — Opium concealed in motor vehicle — Forfeiture — Motor-vehicle loaned to accused by hire-purchaser — Guilty knowledge of hire-purchaser.

The Motor Traders Finance Co., Ltd., the petitioners in this case entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

Held, distinguishing the cases of **Cheng Kee Huat v. Public Prosecutor**[1] and **Public Prosecutor v. Goh Ah Moi**[2] that under the circumstances and in view of the guilty knowledge of the hire-purchaser, the learned Magistrate had exercised his discretion properly.

Cases referred to:—

(1) *Cheng Kee Huat v. Public Prosecutor* (1948) M.L.J. 53.
(2) *Public Prosecutor v. Lim Geok Ching* (1949) M.L.J. 154.

CRIMINAL REVISION.

M. B. Brash for the petitioners.
E. P. Shank (D.P.P.) for the Crown.

Brown, Ag. C.J. : — The petitioners, the Motor Traders Finance Co. Ltd., entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

This case must be distinguished from the two cases which were cited of *Cheng Kee Huat v. Public Prosecutor*[1] and *Public Prosecutor v. Lim Geok Ching*[2]. In both those cases the person who was in possession of the vehicle was also the owner, and the offence was committed by an employee without his knowledge. In this case the person who was in possession of the vehicle was not the owner but the hirer under a hire-purchase agreement, and he had guilty knowledge. There can be no doubt that if he had been the owner the learned Magistrate's discretion would have been properly exercised.

The amount remaining to be paid by the hirer under the hire-purchase agreement was $736. And I was concerned to see that in penalising the guilty hirer by forfeiting the car the innocent owners should not also be penalised by the loss of this sum which remained due to them under the agreement. For this purpose the hearing of this Revision was adjourned part heard in order that the hire-purchase agreement might be produced so that it might be seen what, if any, remedy the owner would have against the hirer for the recovery of this sum.

By clause 4 of the Agreement the hirer agrees that "he will not during the hiring use or permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force or in any manner by reason of which the vehicle may become liable to seizure, confiscation or forfeiture." The hirer has committed a breach of the Agreement under this clause and has rendered himself liable to an action for damages.

I have considered the possibility of the hirer being a man of straw, from whom the damages awarded might not be recoverable. Clause 13 of the Agreement afforded the opportunity for the owners to require a guarantor, of which they did not avail themselves. Subject to this possibility, the owners will be able to recover the balance of the money which remains due to them under the Agreement, and I therefore see no reason to quash the order of forfeiture which the hirer has brought upon himself.

Order accordingly.

Note:— The Opium and Chandu Proclamation was repealed by section 49 of Ordinance No. 7 of 1951. With regard to Forfeiture of Drugs etc., see section 30 of this Ordinance. — *Ed. M.L.J.*

TENG YENG v. N.KR. ARUNASALAM CHETTIAR.

[Orig. Civ. Juris. (Hill, J.) June 27, 1951]

[Ipoh — Civil Suit No. 374 of 1950]

An example of a Case where the Court held that the plaintiff's claim was misconceived and dismissed the same with cost.

CIVIL SUIT.

K. C. Chan for the plaintiff.
M. S. Mahendran for the defendant.

Hill, J. : — This matter was adjourned to enable me to consider whether the plaint disclosed a cause of action.